HON'BLE SRI JUSTICE B. PRAKASH RAO
&
HONOURABLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO.7463 OF 2003

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioners herein who are declared to be the land grabbers in pursuance of the application filed by the respondent, filed this writ petition seeking a writ of Certiorari to call for the records in LGC No.127 of 1998 dated 27-2-2003 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act at Hyderabad and to quash the order passed therein.

The respondent herein is the applicant before the tribunal and he will be referred to as arrayed before the tribunal.

Briefly stated facts of the case, which led to filing of this writ petition, are as follows:

In the application filed by the applicant purported to be under Section 8 and sub-section (1) of the A.P. Land Grabbing Prohibition Act, 1982, it is the case of the applicant that the suit schedule property consists of plot No.32 admeasuring 300 sq.yards is situated in Sy.No.60 of L.B.Nagar village. One P.Raja Lingam was the original owner of plots bearing Nos.1 to 41 in S.No:60 of Tirumalgiri village. Plot No:32, which is the schedule property was sold by P.Raja Lingam on 5.9.1958 under a registered sale deed in favour of one G.Paul Elisha. The said Paul Elisha died on 30.4.1989 leaving behind him his wife G.Deva Karuna and son G.Aisayya. Later, the legal representatives of the deceased Paul Elisha namely his wife G.Deva Karuna and son G.Aisayya obtained permission for construction of compound wall to the schedule property on 4-1-1997 and also obtained no objection certificate from the Air Port Authority on

10-9-1997.

While so, the applicant approached them for purchasing the said application schedule property. Later, after issuance of a publication of a notice in a local news paper 'Eenadu' calling for the objections, if any, the above legal representatives of the original owner viz., G.Paul Elisha executed a registered sale deed on 24.1.1997 in favour of the applicant.

On the ground that the husband of the 1st petitioner and the father of the 2nd petitioner herein tried to interfere with the possession and enjoyment of the applicant, the applicant filed a suit in O.S.344 of 1997 on the file of the XI Junior Civil Judge, City Civil Court, Secunderabad for a permanent injunction and also obtained status quo in I.A. No: 451 of 1997. In spite of the same, they tried to interfere with the schedule property.

It is the further case of the applicant that in the counter filed in the said application, the petitioners have referred to another suit filed by them in O.S.No.50 of 1997 on the file of the XI Assistant Sessions Judge, City Civil Court, Secunderabad against the vendors of the applicant, including Paul Elisha and two others and obtained status quo orders. After coming to know of the same through the counter, the applicant filed an application to implead him as a party-defendant in the said suit, but the same was dismissed. Taking advantage of the status quo orders passed in O.S.No.50 of 1997, the petitioners constructed compound wall and raised structures thereon. Hence the application.

The petitioners herein while contesting the said application contended that originally, the property belonged to one P.Raja Lingam. But, during the course of oral partition, plot No:32, which is the schedule property, was allotted to his daughter Smt.Annapurna. The said Annapurna sold the said property to one

T.Surya Prakash by a registered deed dated 7.2.1979. The said T.Surya Prakash in turn sold the property to the late husband of the 1st petitioner and father of 2nd petitioner by a registered sale deed dated 11.5.1989. While denying the claim of the applicant, they have also reiterated the facts as to the construction of the compound wall as well a room in the schedule property.

With these and other allegations as contained in the respective pleadings, the special Court framed the following issues:

1. Whether the applicant has title to the application schedule property?

2. Whether the rival title set up by the respondents is true, valid and binding?

3. Whether the respondents are land grabbers with the meaning of Act XII of 1982?

4. Whether the applicant in case of its success, is entitled to damages and profits as claimed?

5. To what relief?

Subsequently, during the course of enquiry, the applicant besides examining himself as P.W.1, examined P.w.2 who is a Junior Assistant in the office of Sub-Registrar, Maredpally to produce Register Book and marked Exs.A1 to A.13 documents. Ex.X1 was marked through the evidence of P.w.2. On the other hand, R.Ws.1 to 3 were examined and Exs.B.1 to B.4 were marked on behalf of the petitioners.

With the above said material evidence available on record, the Special Court on a consideration thereof held that under Ex.A.1, P.Rajaligam conveyed title to G. Paul Elisha and therefore,

the relationship of Annapurna with P.Rajalingam or the alleged oral partition, is not established and that even the said Rajalingam having himself conveyed the title to G.Paul Elisha, could not have conveyed any title to T.Surya Prakash and therefore, there cannot be any such saleable right in favour of Annapurna and therefore she could not covey any title to the petitioners herein. Further, it is also held that the applicant has title to the schedule property and the title set up by the petitioners is not true. It is also pointed out that the schedule property has been mortgaged to Vijaya Bank by deposit of title deeds for the purpose of proceeding with the construction. Further, it was held that since the petitioners have no title and the applicant has got title to the schedule property and since the petitioners are in possession of the property without any right, title or entitlement, the petitioners are the land grabbers within the meaning of 'land grabbers'. Having aggrieved by the same, the present writ petition is filed by the petitioners.

Sri Venkateswarulu, the learned counsel appearing on behalf of the petitioners by taking us through the entire record especially the application as well as the counter contended that the applicant has utterly failed to make out any case of any land grabbing without which, no relief could have been granted. In support of it, he sought to place reliance on the decisions reported in STATE OF ANDHRA PRADESH v. PRAMEELA MODI AND ORS. ([1]), M. YADAGIRI REDDY v. V.C.BRAHMANNA AND ANR. ([2]) AND MOHD.SIDDIQ ALI KHAN AND ORS v. SHAHSUN FINANCE LIMITED, CHENNAI AND ANR. ([3]).

In reply thereto, Sri P.Giri Krishna, learned counsel appearing on behalf of the applicant sought to sustain the order impugned and the findings and the relief as given by the special

Court on the ground that they are purely based on the valid material available on record and that there being no proper rebuttal evidence, the same cannot be interfered with.

Having well considered the averments as well as the submissions made across the Bar on either side, the point which emanates for consideration in this case is as to whether under the facts and circumstances of the case, the petitioners can be declared as land grabbers in pursuance of the application filed by the applicant in the present case.

From the above, both the parties tried to trace their title from one P.Rajalngam. According to the applicant as P.w.1, the said Raja Lingam sold the property to one G.Paul Elisha on 5-9-1958. After the death of Paul Elisha on 30-4-1989, his legal heirs i.e., his wife and son after obtaining permission for construction of the compound wall on 4-1-1997 as well as the no objection certificate from the Air Port Authority also on 10-9-1997, sold the same in favour of the applicant on 24-1-1997 after due paper publication on 13-1-1997. Further it is also a specific case as referred to in the very application that since the petitioners were interfering with the possession, the applicant filed the suit in O.S.No.344 of 1997 on the file of the XI Additional Junior Civil Judge, Hyderabad and obtained a status quo order in I.A.No.451 of 1997 and in spite of the same, the petitioners sought to proceed with the construction. Further, in the counter filed in the present application, the petitioners referred to filing of a suit by them in O.S.No.50 of 1997 on the file of the XI Asst. Judge, City Civil Court, Secunderabad and also obtaining a stutus quo order against the applicant.

Therefore, from the above, it is evident that both sides have already approached the Civil Court seeking for the same relief and

they tried to trace the title under various sales as claimed by them and ultimately dragged it back to one Rajalingam.

Therefore, apart from trying to trace the respective title and possession, it is evident that both the parties have approached the Civil Court for necessary relief and obtained the interim orders which should have been subsisting whereas the present application is filed by the applicant in August, 1998. Irrespective of the fact as to who has got title to the property in question, no case has been made out to show that there is any act of land grabbing so as to declare the petitioners as land grabbers and apart from that, the remedy, if any that is available to the applicant, is only to approach the Civil Court.

That apart, it has also been the very case of the petitioners that they are in possession as bona fide purchasers and as such, they cannot be called as land grabbers. At this juncture, even on a reading of the application filed by the applicant, except reiterating the chequered events, there is no such material as to the taking over possession intentionally or unintentionally in an unauthorized manner by the petitioners. Apart from that, the averments in the application does not indicate as to his possession at the relevant point of time or immediately at the time of filing of the application or any dispossession illegally by the petitioners. Thus, there is a total lack of a pleading as to the possession or dispossession in the application whereas, it reflects as to the possession and dispossession in the evidence of the applicant as P.w.1.

In this connection, a Full Bench of this Court in a decision (3rd citation as above) held that there being no allegation of land grabbing, no relief can be granted.

In STATE OF ANDHRA PRADESH v. PRAMEELA MODI

AND ORS. ([4]) the Apex Court considering the very same provisions has held that

> *"The Special Court can play the role of a Civil Court and decide the disputed question of title and possession. The extent of jurisdiction as is permitted by the statute, therefore, is rather wide in its application. Three specific situations have been noted viz.,*
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> *(i)jurisdiction can be had in regard to a case in respect of an alleged act of land grabbing.*
>
> *(ii)jurisdiction can be had in a case where determination of title and ownership are involved and*
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> *(iii)jurisdiction can be had where lawful possession of any land grabbed under the Act is involved."*

Apart from that, in this case even though records have been taken to the Civil Court for the relief, the applicant resorted to knock doors of the Special Court under the provisions of the said Act without any justification. No explanation is forthcoming as to why and how he chooses to give a go bye to the proceedings already initiated and pending at the relevant point of time and resort to invoke the powers under Section 8 (1) of the said Act. Even the findings arrived at by the Special Court are purely restricted to the question of title of both parties rather than the material allegation as to the act of grabbing as required under the provisions of the said Act. The said provisions cannot be invoked straight away to adjudicate the right or title unless the act of grabbing took place. Herein a case where no doubt the petitioners are trying to rest their claim on the basis of the same title which requires to be gone into in a competent court rather than in restricted nature of the proceedings of this nature.

Therefore, in the circumstances, we are of the view that even in spite of accepting the findings given by the Special Court

in this case as mentioned above, no act of land grabbing has been made out by the applicant to seek any relief and therefore, the orders impugned are wholly unsustainable and the very application is not maintainable.

The Writ Petition is accordingly allowed. The orders passed in L.G.C.No.127 of 1998 dated 27-2-2003 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act at Hyderabad are liable to be set aside. It is needless to mention that it is open for the parties to avail any such remedy, available under law, which can be disposed of on its own merits in accordance with law, afresh.

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Justice B. PRAKASH RAO

Dated 6th March, 2007.

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Justice M. VENKATESWARA REDDY

Dvs

HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

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WRIT PETITION NO.7463 OF 2003

(Judgment delivered by the Honourable
Sri Justice B. Prakash Rao)

Dated 6th March, 2007

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[1] 2007 (1) ALD 72 (SC)

[2] 2005 (1) ALD (DB)

[3] 2005 (2) ALD 675 (FB)

[4] 2007 (1) ALD 72